

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER GIFFORD,

Plaintiff,

v.

MICHELE HANSON, et al.,

Defendants.

No. 2:21-cv-00119-TLN-DMC

**ORDER**

Plaintiff, who is proceeding *pro se*, brings this civil action. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On March 3, 2022, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 28.) Plaintiff filed timely objections to the findings and recommendations. (ECF No. 31.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds that it is appropriate to adopt in part and reject in part the findings and recommendations for the reasons stated herein.

Plaintiff initiated this action and filed his complaint while proceeding *pro se*. (ECF No. 1.) As to Defendants' motion to dismiss (ECF No. 14), the findings and recommendations

1 recommend the motion be granted as to Plaintiff's federal constitutional and statutory claims.  
2 (ECF No. 28 at 17.) More specifically, the findings and recommendations recommend Plaintiff's  
3 federal constitutional and statutory claims be dismissed with leave to amend except for Plaintiff's  
4 equal protection claims. (*Id.* at 17–18.) For Plaintiff's equal protection claims, which are  
5 composed of portions of Counts II, V, VI, VII, and XI of the complaint (ECF No. 1 at 15–20), the  
6 findings and recommendations recommend they be dismissed with prejudice (ECF No. 28 at 18).

7 In Plaintiff's objections, Plaintiff argues he should be granted leave to amend the equal  
8 protection claims. (ECF No. 31 at 10.) Plaintiff asserts he can amend the complaint to add  
9 additional facts “fleshing out” his equal protection claims. (*Id.* at 1, 1 n.1.) Additionally,  
10 Plaintiff cites Ninth Circuit authority regarding liberality in amendments to pleadings and *pro se*  
11 litigants. (*Id.* at 10 (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded on*  
12 *other grounds by statute as stated in Akhtar v. Mesa*, 698 F.3d 1202 (9th Cir. 2012)).)

13 The Court agrees that Plaintiff's federal equal protection claims are deficient for the  
14 reasons set forth in the findings and recommendations. (ECF No. 28 at 13–15.) However, the  
15 Court recognizes Plaintiff is proceeding *pro se* and on his original complaint. (ECF No. 1.)  
16 “[L]eave to amend should be granted if it appears at all possible that the plaintiff can correct the  
17 defect.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (quoting *Balistreri v.*  
18 *Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1988)). “The rule favoring liberality in  
19 amendments to pleadings is particularly important for the *pro se* litigant.” *Crowley v. Bannister*,  
20 734 F.3d 967, 977–78 (9th Cir. 2013). As stated, Plaintiff has asserted he can plead additional  
21 facts in support of his equal protection claims. (ECF No. 31 at 1, 1 n.1.)

22 Accordingly, the Court rejects the findings and recommendations with respect to the  
23 recommendation to dismiss Plaintiff's federal equal protection claims without leave to amend and  
24 instead the Court dismisses Plaintiff's federal equal protection claims with leave to amend.

25 In all other respects, the Court finds the findings and recommendations to be supported by  
26 the record and by proper analysis.

27 ///

28 ///

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations filed March 3, 2022 (ECF No. 28), are ADOPTED in part and REJECTED in part as follows;

2. Defendants' Motion to Set Aside Entry of Defaults (ECF No. 15) is GRANTED;

3. The defaults entered as against Defendants Puckett, Hanson, and Hornbrook Community Services District are set aside;

4. Plaintiff's Motion for Default Judgment (ECF No. 10) is DENIED as moot;

5. Defendants' Motion to Dismiss (ECF No. 14) is GRANTED as to Plaintiff's federal constitutional and statutory claims as follows:

a. Plaintiff's First Amendment claims (Counts I and VIII) are DISMISSED with leave to amend;

b. Plaintiff's due process claims (portions of Counts II, V, VI, VII, and XI) are DISMISSED with leave to amend;

c. Plaintiff's equal protection claims (portions of Counts II, V, VI, VII, and XI) are DISMISSED with leave to amend;

d. Plaintiff's voting rights claims (Counts III and VII) are DISMISSED with leave to amend;

e. Plaintiff's Fourth Amendment claims (Count XII and portion of Count II) are DISMISSED with leave to amend;

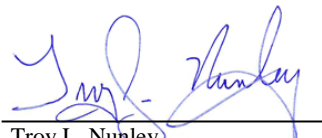
f. Plaintiff's federal statutory claims (Count IV and references elsewhere in the complaint to the Safe Drinking Water Act) are DISMISSED with leave to amend;

6. Defendants' Motion to Dismiss (ECF No. 14) is DENIED without prejudice as to Plaintiff's state law claims;

7. Plaintiff's Complaint (ECF No. 1) is DISMISSED with leave to amend consistent with this Order; and

8. Plaintiff shall file a first amended complaint within sixty days of the date of this Order.

**DATED: September 21, 2022**

  
Troy L. Nunley  
United States District Judge